
Commentary

KAI ERIKSON

I have been invited to say a few words about the two sets of papers on Sociology, Ethics, and the Law that appear in this issue of *The American Sociologist* and the one preceding. On occasions like these, one always hopes to find two or three uniting themes running like threads through the collection of pieces to help organize the commentary. But, alas, the problem with good papers like these is that they range all over the place, even when they are gathered together in a common place and under a common heading. That leaves two choices: to move down the table of contents more or less in order and say something about each of the offerings separately, or to comment on some of the issues raised in a few of them.

Actually, my task is made a good deal easier by the fact that most of the essays appearing in the first of the two special issues can be said to focus on moral concerns of a more global kind and on the way sociologists should relate to them, while those appearing in the present issue can be said to focus on ethical concerns of the kind we often encounter in doing sociological work. The line I am drawing here is far from exact. The interesting paper by Hessler and Freerks on the concept of privacy in Sweden and the United States, for example, would have been placed in the first issue if my somewhat awkward distinction had been the defining rule when the collection was divided into two sets. So I am being arbitrary right off the bat.

I find that I have more to say about the second group of papers than the first, not because I respect them more but because they touch on matters I have been worrying about for a longer period of time. But I would like to make a few comments on the first set before moving on.

Sjoberg and his colleagues, if I understand them correctly, call for "a human rights framework" in sociology (as opposed, say, to an "ethically relativist" framework) to provide an "external standard" for dealing with abuses of state power such as genocide and politicide—one of their principal arguments being that we

cannot do proper research on such subjects without taking a moral position on them. It's a good point. And it turns out to be a good way to set the stage for the papers to follow.

Troy Duster (in what I thought was the strongest paper in the collection) offers a frightening indictment of the criminal justice system and the inequities of its focused War on Drugs. Sociologists already know that justice in this country is far from blind to matters of race and class and gender, but, if Duster is right, we don't know the half of it. The data Duster offers are decisive, and he presents them to us with an appropriate calm and dispassion. But the essay itself seems to be driven by an icy, controlled rage that informs readers even as it compels their attention. Duster takes a clear moral position, obviously; but, more to the point, he locates the issue he is discussing on a relentlessly moral plane, which is exactly where it belongs. The essay is galvanizing, and it is the tone as well as the data that make it so.

Farrell and Koch offer another indictment, this time of criminal justice programs that serve as "unthinking defenders of the system." One of the ranking purposes of education in criminal justice, one textbook announces, is "to maintain the existing order, which is crucial to the stability of an organized society." Farrell and Koch fear that the kinds of sociological perspective found in the work of criminologists like Sutherland and Cressey will be crowded out of the expanding field of criminal justice if it concentrates too narrowly on the task of training specialists for positions in what is becoming a rapidly growing industry. Duster's paper, for example, will presumably have no place in the books and curricula that are now beginning to dominate the field, nor will any other work that is critical of or even attentive to the way the institutions of criminal justice relate to the larger social and cultural context. The danger is that criminal justice programs will become for prison administrators and police officials what flight training is for airline pilots: an efficient way to learn a vocation. Good paper.

Koch's paper is a primer on how to read data, and it, too, will be the kind of work left out in the new order of criminal justice programs if Farrell and Koch are correct. It turns out on examination that rapes in which black men victimize white women are more common by quite a margin than the reverse, and, moreover, that this number may be increasing. A finding. But why should this be so? A variety of explanations have been offered at one time or another, one of the most persistent being that black offenders *seek out* white victims for a variety of specified and unspecified reasons. That stands to reason, does it not? Well, no, it doesn't. As Koch points out, drawing on the work of Robert O'Brien as well as on his own, there are something like ten white women for every black woman available for assault in the population as a whole; and that being so, the number of black-white rapes is a good deal less than one would expect by chance. Moreover, says Koch, the data do not even support the notion that black-white rapes are on the increase. Ergo, nothing to explain. Now life is not that neat, as Koch well knows, but this simple observation speaks volumes about the way we sociologists sometimes ply our trade. It is an honored custom among

us to present a set of findings and then to reach out into the blue for guesses as to why the findings work out as they do. At their best, these guesses are informed by sociological training and experience. Good or bad, however, they are a kind of projective test in which one is almost invited to cast onto the screen whatever impressions well up from within. Most of us are genuinely cautious in the way we offer our guesses; but, for all of that, the guesses have a way of attaching themselves to the data that brought them into being, with the result that "the literature" soon seems to include the guess as one of the "findings." It may turn out that black offenders do seek out white victims (whatever that may mean), since we know that populations are distributed in complex ways. But we'll need other data to inform ourselves on that matter, and I, for one, will remember this essay when talking to graduate students about the nature of sociological evidence.

Nothing need be said about the Leggett and Roach article (although I had not seen the new introduction by the authors as of this writing). It is reprinted intact from a 1969 issue of *New Politics* and tells the story of events that took place in the energetic fall of 1968 at the University of Connecticut. It was interesting reading then and it remains so now.

The Case and Farrell paper, to round out the set, notes that a Black Book circulates among casinos in Las Vegas listing the names of people who are to be denied service because (presumably) they have criminal connections. Case and Farrell find that the Book is highly discriminatory. Most sociologists will be neither surprised nor distressed at that news, but the authors worry that many of us will not be able to accept that finding because the group being discriminated against is Italian rather than Black or Latino or something else. Is this true? I don't know. It's an interesting piece of sociological detective work, though.

The papers by Scarce, Leo, and Clarke all deal in one way or another with the obligations sociologists assume when they learn things in the course of research that may be useful to others—and especially to law enforcement officials. Scarce went to jail for 159 days because he refused to testify before a grand jury; Leo's notes were subpoenaed by a defense attorney who thought Leo knew things that would be helpful to his client; and Clarke—who writes a thoughtful commentary on the profession, the ethical climate in which we work, and the Code of Ethics that is supposed to reflect and give form to that climate—has a story of his own to tell.

Scarce found himself in an awful predicament. He was engaged in research that rested on interviews with environmental activists, among them members of the Animal Liberation Front. One of his research subjects came under investigation in connection with a raid on a local campus, and Scarce was ordered to appear before a grand jury investigation. He refused to answer questions put to him, was found to be in contempt, and was jailed for more than five months. It must have been an agonizing experience, and Scarce obviously acted with exceptional honor and grace.

Leo was in a similar predicament. He was doing research on the behavior of

detectives in a police interrogation room when the attorney of someone who had been questioned in Leo's presence called on him to turn over his research notes. Eventually he did, reasoning in part that his testimony could do no harm to the detectives to whom he had promised confidentiality because the interrogation in question had been entirely proper. But Leo, too, went through an extremely troubling experience before the matter (more or less) resolved itself.

The ethical dilemma seems straightforward enough: on the one hand, each of us has a citizen's obligation to cooperate with grand juries and other law enforcement procedures; while on the other, each of us has a professional's obligation to protect research subjects from disclosure of the information they pass on in confidence. It is generally acknowledged that none of us has the obligation or even the right to remain silent when we have reason to suppose that a crime is about to be committed. But, short of that, how do we find a moral ledge to perch on during those blessedly rare occasions when the two obligations overlap? One solution would be to inform subjects at the outset that we cannot legally protect them from the power of subpoena and turn to research in which that is unlikely to make a difference. Another would be to promise confidentiality even though we have no legal protection for doing so—meaning, of course, that we accept whatever happens, including citations for contempt and even incarceration, as our part of the bargain.

The only solution that makes much sense to Scarce and Leo is to seek special privilege for sociologists and their work product, making it possible for us to protect our research subjects in the same way that priests protect their parishioners, lawyers their clients, doctors their patients, and, in a more ambiguous way, journalists, their sources. Neither Scarce nor Leo has much hope that fifty states can be persuaded to enact such shield laws—only slightly more than half now protect journalists—so they count rather hopefully on federal legislation.

The only problem I can see in proceeding—aside from the fact that we are almost sure to lose—is that we will be drawn into a public conversation that may do us as much harm as good. On what grounds might we seek protection? Aside from muttering something about “the public's right to know,” our argument almost has to be that the work we do is so important to the commonweal that the ordinary obligations of citizenship pale in comparison. “What we do as scholars is terribly important to society,” Scarce says, and I am perfectly willing to join with him on that. But I would also like to note—this *is* the kind of thing we study, isn't it?—that to speak thus is profoundly self-serving. We are saying in effect that the way *we* make *our* living is so vital to the larger social good that we should be protected in the doing of it.

Nothing new there. The priest's privilege is presumably sought by the church, and the lawyer's and doctor's privileges by the professional associations that represent their interests. Those other professions are able to insist without a visible trace of embarrassment that the work they do is important enough to deserve an immense protection. But I am not at all sure that we would be wise to make the same claim. What would we say? What is our argument?

In the meantime, however, the profession remains in an awkward position, as

Lee Clarke points out with his usual incisiveness. The ASA Code of Ethics declares flatly that we “must not expose respondents to substantial risk of personal harm” (this on the remarkably self-confident theory that we *know* what harms people and what does not) and that “confidential information provided by research participants must be treated as such by sociologists, even when this information enjoys no legal protection or privilege and legal force is applied.” That sounds crisp and decisive, but in Scarce’s case the ASA took the position that sociologists are required to “take steps” to protect the confidentiality of their subjects but are not compelled to resist a court order or to run further risk. The ASA could hardly do otherwise. It cannot *counsel* its members to violate the law, and it certainly cannot *compel* them to do so. It cannot even promise to provide legal help when members get into trouble. So in the end our Association can only recognize how narrow (and how lonely) that moral shelf can be, offer some support to those who venture out on it, and honor those, like Scarce, who have the courage not only of their but of our convictions.

Clarke is troubled by all that. He recognizes, as does Scarce, that the ASA office is steadfast and even valiant when a subpoena is served on one of its members, but the Code itself—insistent but cautious, moral but prudent—is simply too ambivalent an instrument for the purposes it is meant to serve. Clarke has some advice on that matter that strikes me as eminently wise and sane. As always, his is a voice worth listening to.

There may be a distinction worth making here, if only in passing. The three stories we are told in these pages (like a number of others that have been heard in our professional neighborhood over the years) describe quite different levels of involvement. Scarce was ordered to appear before a grand jury. Leo’s field notes were sought by an attorney for the defense in a criminal trial. Clarke was in danger of having to turn over his research files to the defendant in a civil action. And the well-known case of Mario Brajuha, to round out this list of difficulties, involved a subpoena from a prosecutor’s office. How much difference should this make? The ledge is very narrow when the needs of a grand jury investigation are being weighed against a promise of confidentiality, but events of this kind—so far at least—have been rare (and, probably, all the more painful for that). Our society has become ever more quarrelsome and litigious, and my own guess is that we have more to fear from civil actions than from criminal prosecutions in the long run. The search for useful information in such cases is often fueled by large sums of money and conducted by attorneys who almost have to be classified as birds of prey. I have a story to tell too. I was consulting for a law firm when I learned that the sheriff of New Haven was on his way to my front door with a subpoena, giving me just enough time to throw my notes into packing boxes and mail them off to the law firm—where, twenty years later, they still remain, protected by someone else’s privilege. I didn’t have the slightest moral qualm in taking advantage of this shield because it did not seem to me that the attorneys who had sought the subpoena—representatives of a powerful coal company—were engaged in a search for justice. Nor, I would guess, was that much in Clarke’s mind when he took his turn on the shelf. He

had much more to fear than I did, so the comparison is a loose one at best, but neither of us were plagued by *moral* dilemmas.

Leo's paper, to turn to a new topic, raises a matter of ethics that I regard as maybe even more serious than the one he is posing. The price Leo thought he had to pay for the opportunity of observing what went on in those interrogation rooms was to lie repeatedly about himself, thus engaging in a degree of deceit that is more widely known in espionage than in social research. At the risk of sounding grumpy about a matter that may matter more to me than to a number of others, I have to say that I do not think Leo should have been there in the first place under those circumstances. I do not want to dump on Leo, who sounds like a good person (and who, in any event, should have received better guidance from his advisors). But there is a casualness in this account, an indifference in moral tone, that emerges now and then in our professional conversations; and even at the risk of being unfair, I am going to ask Leo to serve as an example of it. (I should begin by saying that I first developed an interest in this topic when I was a graduate student and not only applied for but was disappointed not to receive a position as one of the undercover sociologists invading the religious group later described in Festinger et al., *When Prophecy Fails*. So I have not always been as solemn on the topic as I am now.)

Leo writes earlier in his paper that "one of our most fundamental obligations as field researchers is to protect our subjects from invasions of privacy, humiliation, [and] unwanted exposure" and to avoid "spoiling the field for future researchers." But that may be exactly what he ended up doing. For one thing, he used pseudonyms on the grounds that "real names may damage the reputation of the individual(s) or institution(s) under study," but he then offered so many clues to the identity of the department he studied that ninety seconds in a library would probably do the trick. But, more to the point, he "manipulated" and "conned" his subjects into thinking he was someone quite other than his true self, deliberately adopting "a research strategy well known to confidence men setting up their marks." And then, having deceived his subjects, he made a public point of having done so—unnecessarily, it needs to be added, at least for the purposes of this paper. Do the "marks" feel humiliated by all that? Exposed? Damaged? Invaded? I don't think Leo would be well advised to go back to the department to find out, and I suspect that none of the rest of us will be welcomed there either. Such much for protecting the field for future researchers.

"I consciously reinvented my persona to fit the attributes, biases, and worldview of my subjects," Leo writes. "I feigned conservative politics; I openly shared their bias against abortion and in favor of the death penalty; I affirmed their antipathy toward homosexuality." In other words, he flat-out lied. "By my personal standards," he adds by way of clarification, "I acted in ways that I would consider morally reprehensible in other contexts." And why was that conduct not morally reprehensible in this context? Because "the standards necessary to carry out the role of a morally competent field researcher of deviant subjects are necessarily different than the standards by which we judge morally competent human beings." Forget for the moment that police detectives have just become

“deviant subjects,” and listen to the flow of the argument. It says that we are exempt from the responsibility of acting like “morally competent human beings” if doing so prevents us from “acquiring the kind of data” we happen to want. Now that’s an astonishing idea, isn’t it? Morally reprehensible behavior is okay in professional life if that turns out to be the only way to get access to data? Of one thing I’m sure: Leo would do well not to repeat that theorem to the federal officials from whom he seeks an evidentiary privilege.

I would like to find ways to protect Scarce and Leo and (had it come to that) Clarke when they face the dilemma so well described in these papers. But I would also like to find words to convey to people who engage in disguised research that the scholarly community to which they belong and in the name of which they conduct research does not approve of that kind of inquiry. I think Leo did wrong. He may now think so himself. But there are larger questions, too: Did his professional elders object? Will his university complain? Does the ASA disapprove? Am I even right in supposing that most sociologists find such research distasteful and unethical? If the answer to any of those questions is in doubt, then how can we ask Leo or anyone else to act differently?

Murray Wax notes in his elegant review of some of the ethical problems encountered in ethnographic research that fieldwork involves “crossing some formidable border in order to learn about a group that to the investigator is alien in significant ways.” Well said. Investigators who feel that they need to disguise themselves when they venture into the field, however, see that border as a double obstacle. They presumably expect to meet people who are at least somewhat alien to them, of course; but they adopt disguises because they worry that *they* will otherwise seem so alien to the people whose world they want to enter that they will not be able to get the job done.

Wax says, as if it were self-evident, that “it is both wise and moral to identify oneself and to request permission to study.” That is probably evident to most of us, but the further question raised by Leo’s paper is whether researchers who profess ideologies and moralities quite unlike their own really are “identifying” themselves in any useful sense of the term. I suspect that Wax would agree with me that they are not.

I am quite sure that Becky Thompson would agree as well. Her insightful essay takes us into somewhat different moral terrains, but she, of all the contributors, is most concerned about the nature of the interaction between interviewer and interviewee. It brings this collection to a close on an important and compelling note.

A number of scholars have wondered how best to reach across differences in power, gender, race, ethnicity, and experience in the interview situation. Thompson reviews some of that literature and then joins the conversation by considering some of the ethical and methodological challenges that emerge in studying the effects of trauma on people who have suffered from sexual abuse, homophobia, racism, and related problems. Thompson argues that “objectivity” would be a largely meaningless methodological stance in such interviewing, even if it could be obtained by determined acts of will. Indeed, she comes close to saying that detachment in such circumstances may itself be unethical.

Here we are, tape recorder in hand, sitting across from other human beings who are speaking about a deep and numbing pain that possesses them and darkens their days. How should we relate to them? What do we owe them? Thompson begins by raising the now familiar question as to whether an interviewer who “has been there” is in a better position not only to learn things but to avoid some of the exploitativeness that all research involves up to a point. Thompson, as it happens, *has* been there. So she was able to share with those she interviewed, not only in the sense that she knew whereof they spoke, but also in the sense that she was willing to compare notes on the experiences that linked them.

Now it happens that I have interviewed a large number of traumatized persons myself. I have not “been there,” nor have I ever felt that this posed a barrier to my research, most of it on victims of disaster. Indeed, I would even argue that strangers like me can sometimes elicit a sharper and more textured description of traumatic events exactly because we do not know from personal experience what it is like and thus have to be tutored. Thompson notes that one of the virtues of having been there is that people do not have to “start from the beginning.” But the fact that people *do* have to start from the beginning for people like me has virtues of another kind.

That said, however, there is no question in my mind that I—an established white male with no real traumatic injuries to report—could not have begun to learn what Thompson learned, even supposing that the women she talked to would have bothered with me at all. Nor is there any question in my mind that I would not have brought much comfort to them, as Thompson clearly did. It is not a question of establishing rules of eligibility, then: you must be of a particular gender or ethnicity or sexual identity or have been exposed to certain of life’s travails to engage in meaningful research of specific kinds. It is a question of being sensitive to “differences in life experiences and social location” in the planning and execution of research, and Thompson is most profoundly that.

So there are benefits in having been there. But there are problems, too, and that same sensitivity gives Thompson a rare insight into them. It can be hard to listen when one has shared the pain an interviewee is talking about, for example. And it is all too easy to “block out” or “forget” or “deny” or “minimize” as the mind tries to make normal what can never be so. I can testify from my own (much less trying) experience that steady exposure to the anguish of others can be demoralizing enough to make one want to flee. And I can also testify—contradictory as this may sound—that the stories injured people tell can be very tedious, especially when one is looking for certain kinds of data. This is because, as Thompson points out, the individuals one interviews in situations like these have to be in control of their own narratives, to tell stories in their own way, which can mean endless silences and detours, interruptions and retellings, flashbacks and circlings about—a collage of episodes and fragments and moments out of time.

These things are difficult for people like me, who know so little from personal experience of the human worlds we are trying to understand. Thus I am in awe of people like Thompson who know so much more, and I salute both her and them.